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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,167	12/18/2001	Alfred E. Keller	1856-09501 (98/002)	5731
31889	7590	01/06/2004	EXAMINER	
DAVID W. WESTPHAL CONOCOPHILLIPS COMPNAY P.O. BOX 1267 PONCA CITY, OK 74602-1267			LANGEL, WAYNE A	
			ART UNIT	PAPER NUMBER
			1754	

DATE MAILED: 01/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/824167

Applicant(s)

Keller et al

Examiner

Langel

Group Art Unit

1754

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on 10-31-03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 10-38 and 54-58 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 10-38 and 54-58 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ 2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 10-38 and 54-58 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-30 and 36-40 of copending application Serial No. 10/024,679. Although the conflicting claims are not identical, they are not patentably distinct from each other because they would be prima facie obvious over each other. It is noted that applicant has not argued the merits of this rejection, but has stated that applicant is willing to submit a terminal disclaimer to obviate the rejection.

This is a *provisional* obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10, 12, 14-16, 20-24, 27-30, 37 and 58 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Philippe et al. '471 (newly cited) in view of either Tonkovich et al. '838 (newly cited) or Tonkovich et al. '909 (newly cited), further in view of Kohl et al. (of record). Philippe et al. '471 is the English equivalent of WO 97/19019, which was applied in the last Office action. It would be prima facie obvious from either Tonkovich et al. '838 or Tonkovich et al. '909 to carry out the process of Philippe et al. in a millisecond reactor, since Philippe et al. '471 teaches at column 3, lines 55-59 that the contact time of the gaseous reaction may be as low as 0.5 seconds, and Tonkovich et al. '909 and Tonkovich et al. '838 both disclose the advantages of using millisecond reactors to carry out chemical processes. (See column 2, lines 24-60 of Tonkovich et al. '909, and column 2, lines 33-59 of Tonkovich et al. '838. It would be further obvious from Kohl to pass the product gas stream of Philippe et al. '471 through a cooler and condenser to recover the produced sulfur. Applicant's arguments as to what Kohl shows or does not show, are not convincing, since Kohl is

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merely relied upon to show the well-known steps of cooling and condensing to recover a product, specifically a sulfur product resulting from the oxidation of hydrogen sulfide.

Claims 25, 26, 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Philippe et al. '471 in view of either Tonkovich et al. '909 or Tonkovich et al. '838, further in view of Kohl as applied to claim 10 above, and further in view of Srinivas et al. Srinivas et al. is relied upon as discussed in the last Office action. It would be further obvious to include a lanthanide metal such as samarium or lanthanum in the catalyst of Philippe et al. '471, since Srinivas et al. teach that rare earth metals including lanthanum and samarium are useful catalysts for selectively oxidizing hydrogen sulfide to elemental sulfur, which is the purpose of the process of Philippe et al. '471.

Tonkovich et al. '975 is made of record for disclosing a millisecond reactor.

Keller et al. is made of record as constituting the parent of the instant application.

This application apparently discloses allowable subject matter (i.e., regarding the subject matter of claims 11, 13, 17-19, 33-36, 38 and 54-57.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wayne A. Langel whose telephone number is (571) 272-1353. The examiner

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can normally be reached on Monday through Friday from 8 A.M. to 3:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman, can be reached on (703) 308-3837. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2351.

WAL:cdc

December 22, 2003

*Wayne A. Langel*  
WAYNE A. LANGEL  
PRIMARY EXAMINER